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April 30, 2019

VIA ECF

Hon. Douglas E. Arpert
United States Magistrate Judge
Clarkson S. Fisher Building
& U.S. Courthouse
Room 6000
402 East State Street
Trenton, NJ 08608

Re: **Lawson, et al. v. Praxair, Inc., et al.**
Civil Action No. 3:16-cv-02435-BRM-DEA

Dear Judge Arpert:

As you know, we represent the Praxair Defendants in the above-referenced matter. Please accept this letter in response to Your Honor's April 15, 2019 Order requesting that the parties submit correspondence to the Court addressing "(1) the party's position on any issue the party would like the Court to consider in relation to the appointment of a Special Master; and (2) the party's position on the items identified in Rule 53(b)(2)." *See* Doc. No. 187.

The Praxair Defendants understand that Federal Rule of Civil Procedure 53 empowers the Court to appoint a master, specify the master's powers and provide for the master's compensation. However, the appointment of a special master must be limited in scope. *Luppino v. Mercedes Benz USA, LLC*, 2013 WL 5025229 *3 (Sept. 11, 2013). Accordingly, the Praxair Defendants would request pursuant to Fed. R. Civ. P. 53(b)(2)(A) that the Order appointing the special master include language that the special master's duties are to resolve only the issues outlined in the parties' joint status report filed with the Court on April 5, 2019 (doc. no. 184) as well as any new discovery issues that may arise going forward and that the special master may not re-visit and/or hear issues that have already been decided by this Court (e.g., redactions related to substantially similar products).

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Pursuant to Fed. R. Civ. P. 53(b)(2)(B), the Praxair Defendants agree that the special master may engage in *ex parte* communications with the Court at his or her discretion; however, the special master shall not engage in *ex parte* communications with the parties. The Praxair Defendants also request that the Order require the special master to create a record of any proceedings and/or submissions consistent with the Federal Rules of Civil Procedure and the Local Rules of this Court. Fed. R. Civ. P. 53(b)(2)(C). As such, the Praxair Defendants would request that the special master preserve all written communications and documents provided to him or her by the parties and all transcripts of proceedings and other material relied upon by him or her in making findings and formulating his or her recommendations to the Court. In addition, the Praxair Defendants request that the special master shall file a report and recommendation setting forth in full any decision that he or she reaches together with the basis for that decision in accordance with Fed. R. Civ. P. 53(e).

With respect to the compensation of the special master, the Praxair Defendants would request that the charges of the special master initially shall be split equally among the parties; provided, however, that the Court shall retain the right to shift all or part of the charges to one party or the other after submission of a special master's report and upon a showing of good cause. The special master shall be free to employ firm attorneys and firm legal assistants at their customary hourly rate. Such persons shall be under the supervision and control of the special master, who shall take appropriate action to ensure that such persons preserve the confidentiality of matters submitted to the special master for review.

Thank you for your consideration.

Respectfully submitted,

s/Jeremy D. Mishkin

Jeremy D. Mishkin

JDM:med

cc: Thomas W. Sheridan, Esquire (*via ECF*)
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